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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,)	Case 1:14-cr-00397
)	
Plaintiff,)	
)	
v.)	Alexandria, Virginia
)	August 14, 2015
HANOCH DAVID STEIN,)	9:32 a.m.
)	
Defendant.)	
)	Pages 1 - 33

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE ANTHONY J. TRENGA
UNITED STATES DISTRICT COURT JUDGE

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 THE CLERK: Criminal Case 1:14-cr-397, *United*
2 *States of America v. Hanoch David Stein.*

3 Will counsel please identify themselves for
4 the record.

5 MR. DWYER: Good morning, Your Honor. Kellen
6 Dwyer for the United States. With me at counsel table
7 is Special Agent Mike Kurisky of the FDA.

8 THE COURT: Good morning.

9 MS. BLANCH: Good morning, Your Honor. Erin
10 Blanch serving as local counsel in this case. Mr. Ari
11 Casper has already been admitted *pro hac vice*, and
12 he'll be arguing on behalf of Mr. Stein.

13 THE COURT: All right.

14 MR. CASPER: Good morning, Your Honor. Ari
15 Casper on behalf of Defendant Hanoch David Stein.

16 THE COURT: All right. Welcome Mr. Casper.
17 We're here for sentencing.

18 Mr. Casper, have you provided a copy of the
19 presentence report to Mr. Stein, and have you reviewed
20 it with him?

21 MR. CASPER: Yes, Your Honor.

22 THE COURT: Any objections to the presentence
23 report other than what you've put in your filings?

24 MR. CASPER: No, not in addition to what
25 we've put in our filings.

1 THE COURT: All right. Would you like me to
2 hear further on your objections?

3 MR. CASPER: Yes. I won't redo everything we
4 said, but there are a couple of things that I wanted to
5 point out that are noteworthy. The three primary
6 objections resolve around, one, the issue of safety in
7 this case. I think it's very important that everybody
8 understand what happened here. Two is his role, and
9 three is, obviously, the loss amount. I'll be brief on
10 all of them.

11 THE COURT: All right.

12 MR. CASPER: In the government's sentencing
13 memorandum, they point out on page 3 -- it says, As an
14 initial matter, the defendant had experience working
15 for a licensed distributor of prescription drugs at a
16 company called North American Dental. The defendant
17 was thus well aware of licensing, shipping, and storage
18 regulations that govern the distribution of
19 prescription drugs.

20 And I think that it's this misunderstanding
21 that's caused -- there was a lot of briefing on this
22 sentencing. Mr. Stein fully accepts responsibility for
23 his conduct. He's here because he pled guilty, and
24 he's very remorseful. You'll hear from him later. But
25 I think it's very important to have context in terms of

1 the guideline range is that that statement from the
2 government is inaccurate because what Mr. Stein does
3 during the day is he runs a warehouse for a dental
4 supply company, a wholesale company. They don't deal
5 with prescription drugs. And so the notion of
6 licensing and how that works is very foreign to him.

7 This company does parallel imports, which,
8 you know, in some circles is known as gray market,
9 which I know the Court is familiar with. And what
10 happens in that world is the companies make money based
11 on a spread of goods that are either intended to be
12 sold overseas, brought back to the United States, and
13 they're sold here for much more. For example, you
14 could have a product that's \$100 sold in Nigeria, but
15 they sell it here for \$500. So this parallel imports,
16 they bring that here, and that spread marks a
17 difference. That's how they make money.

18 The dental supply companies and a lot of
19 companies, that's how they do that. That's legal.
20 There's nothing illegal about that. They call it
21 parallel imports, and they call it gray market because
22 it's gray because you're bringing things back. But the
23 whole issue there is the manufacturers get upset at
24 that process. So there's a bit of a cat-and-mouse game
25 that they play, but those are civil suits. Those

1 aren't criminal suits.

2 So the reason I raise it is because Mr. Stein
3 had no dealings with prescription drugs at all. That
4 doesn't mean that he didn't learn what happened during
5 this process, and it doesn't mean that he's not
6 accepting responsibility. But when you talk about the
7 loss amount in this case under the guideline range, you
8 have to look at what he really thought was happening,
9 what was reasonably foreseeable to Mr. Stein and what
10 he thought.

11 And what he thought was that this company, TC
12 Medical, was really capitalizing on the gray market.
13 He understood that there were things happening, and
14 then, ultimately, he learned what was going on with
15 drugs being imported. He got a letter from the
16 California Board of Pharmacy. He got some things that
17 opened his eyes to it. At that point, he should have
18 done the right thing, and he didn't. He's here to
19 accept responsibility for that.

20 But in terms of a loss amount, the government
21 has argued that he should be on the hook for
22 \$13 million because that's what went through his
23 warehouse. Quite frankly, there's no way he could
24 reasonably foresee that. He didn't deal with the
25 dollars of it. He didn't market it. He didn't sell

1 it. He had nothing to do with any of that. He was
2 basically doing at night for an hour what he was doing
3 at his day job. He was paid \$15 a box.

4 THE COURT: This goes to which objection?

5 MR. CASPER: This goes to the loss amount.

6 THE COURT: Use of the \$13 million as the
7 proxy for loss?

8 MR. CASPER: Correct. That goes to the
9 objection to paragraph 62.

10 THE COURT: All right.

11 MR. CASPER: The other thing I want to
12 address is the safety concern, paragraph 51 of the PSR
13 where the probation officer concedes that the
14 government doesn't have information on specific harms
15 inflicted on any of these patients. I think it's
16 important here because the safety issue is a big one.

17 Mr. Stein, his efforts were to try and keep
18 these items cold. He was told by David Burke, who was
19 the head of this -- or one of the heads of the
20 organization, that you had two to six weeks to make
21 these things happen. There's no evidence in this case
22 that people were sick. And if there is evidence of
23 that other than some random e-mail, there's no evidence
24 that Mr. Stein knew about it. I just wanted to put
25 that in perspective as we go forward.

1 THE COURT: All right.

2 MR. CASPER: Thank you.

3 THE COURT: Thank you.

4 Counsel, any objections to the presentence
5 report?

6 MR. DWYER: No objections, Your Honor. I
7 would like to respond to --

8 THE COURT: Would you like to respond to the
9 objections? Go ahead.

10 MR. DWYER: -- the objections and some of the
11 things that were in the sentencing memorandum and were
12 just said.

13 THE COURT: All right.

14 MR. DWYER: First, it says in the presentence
15 report -- or in the defendant's sentencing
16 memorandum -- and you've somewhat heard it echoed just
17 now -- that there's no proof this wasn't safe. He
18 actually says in the sentencing memorandum that because
19 TC Medical had repeat customers, that proves that the
20 drugs were safe and effective when they kept coming
21 back.

22 You know, Mr. Stein had made the
23 determination on behalf of tens of thousands of
24 American patients that the FDA regulations are really
25 just kind of red tape and that, you know, the drugs he

1 sold were basically the same thing and were essentially
2 safe. That wasn't his determination to make. It's the
3 FDA's job to decide whether misbranded drugs are safe
4 or not and what should be approved and what warnings
5 and labels are necessary. Mr. Stein ignored those
6 objections and continues, based on his sentencing
7 memorandum and based on what counsel just said, to say,
8 Well, you know, if you can't point me to someone
9 directly who was harmed by this, then it was basically
10 safe, and it wasn't really that big of a deal.

11 There is evidence of an e-mail of someone, a
12 medical professional, who complained to TC Medical that
13 five out of the ten patients who used their Botox had
14 severe reactions and some had to go to the emergency
15 room. But beyond that, the reason why there's not kind
16 of explicit evidence of who was harmed by this is
17 because TC Medical was not a legitimate drug company
18 and didn't track and report adverse reactions to their
19 drugs. Doctors who were involved in buying this stuff,
20 most of them knew they were complicit in a crime and,
21 of course, then aren't going to report to the FDA or to
22 any authorities if something bad happens.

23 So Mr. Stein doesn't get to engage in illegal
24 drug distribution and then come to the Court and say,
25 Well, because you can't prove that my black market

1 activity caused harm, then I shouldn't be significantly
2 punished.

3 Secondly, there's claims in the sentencing
4 memorandum and just now that Mr. Stein was, quote,
5 vigilant in his care for products which required
6 refrigeration and perfected the shipping of these
7 products so they would arrive at their destination cold
8 and dry. That's on page 7 of the sentencing memo.
9 That's flatly contradicted by the statement of facts
10 which is repeated at page 16 of the presentence report.
11 That goes through several e-mails in which customers
12 are complaining that products shipped by Mr. Stein were
13 arriving warm and often wet.

14 There's also photos of Mr. Stein's basement
15 which is in -- I provided a courtesy copy of a slide
16 presentation yesterday. I could pass up another one to
17 make sure Your Honor has it. I provided it to defense
18 counsel as well.

19 (Document are passed up to the Court.)

20 THE COURT: I have that, but I'll take it.

21 MR. DWYER: On the second page, this is a
22 photo that was taken of Mr. Stein's refrigerator during
23 the search warrant. On the left there -- on the right,
24 you'll see this is just a normal refrigerator with
25 mayonnaise. On the left is a drug called Lucentis,

1 which is used to treat macular degeneration of the eye
2 and is actually injected into a patient's eyeball.
3 This is what he's storing in his refrigerator. This is
4 not someone who has perfected the art of taking care of
5 prescription drugs. This is someone who was reckless
6 about it. There's more photos on the next few pages.
7 I won't go through one by one, but you get the idea.

8 That goes to kind of the knowledge of
9 illegality. The idea that he says in his sentencing
10 memorandum that at first he was unaware of the
11 illegality of TC Medical's activities and only slowly
12 began to realize that it was operating illegally --
13 Mr. Casper said a moment ago that he wasn't really an
14 expert in licensure because that wasn't exactly what
15 his day job was. I mean, you don't have to be an
16 expert to know that you're not allowed to keep eye
17 injections in your refrigerator.

18 There's all sorts of evidence of
19 consciousness of guilt. If you look at the first page
20 of the presentation, Mr. Stein had four locations at
21 which he would ship drugs to under fake names. He used
22 Albert Simmins at one location, Joe Spiro at another.
23 He used a friend, Avi Thav, to receive at another
24 location. They would all be consolidated at his
25 residence in his basement and then shipped out. There

1 was no reason to do this unless you know what you're
2 doing is illegal.

3 Finally, Your Honor, if you turn to page 6 of
4 the presentation, these are warning letters Mr. Stein
5 repeatedly got from the FDA, the first one coming as
6 early as November 2011. What the FDA does is if it
7 detains a product at the border that is illegal and
8 can't come into the country, they'll send you a notice
9 saying, This product is intended for you, and we
10 believe it's illegal. If you disagree, you can come
11 file something; otherwise, we're going to destroy it or
12 send it back.

13 He got several of these letters and ignored
14 them. The next page is one from the California Board
15 of Pharmacy. That's a cease and desist letter. The
16 page after that, page 8, is an e-mail informing him
17 that a client got a similar letter from the FDA and no
18 longer wants to buy with us. It goes on and on. The
19 next page he's instructed to make sure that the drugs
20 are clean, meaning that they don't have the Netherlands
21 symbols on it. The final page is a picture of one of
22 the drugs that was found in Mr. Stein's house where it
23 was taken a photograph of and e-mailed. That clearly
24 says intended for Philippines use only.

25 So there's really not -- it's kind of a

1 little bit concerning that Mr. Stein would still come
2 in and say, Well, I didn't know at first it was
3 illegal. I slowly began to realize it, and my only
4 mistake was not getting out soon enough. That's not
5 the nature of the conspiracy. I just wanted to make
6 that very clear for the record.

7 THE COURT: All right.

8 MR. DWYER: Thank you.

9 THE COURT: Do you want to speak any further
10 to sentencing objectives?

11 MR. DWYER: No, Your Honor.

12 Just on the loss amount, the \$13 million.
13 The conspiracy was \$30 million. The \$13 million is
14 just what Mr. Stein physically picked up and shipped
15 out. So the idea that he's being held responsible for
16 somebody else's conduct or for something he didn't know
17 what he was doing is just not supported by the record.

18 THE COURT: All right. Thank you.

19 Mr. Casper.

20 MR. CASPER: Would you like me to address
21 sentencing generally?

22 THE COURT: Yes.

23 MR. CASPER: Your Honor, I would just point
24 out that if you saw the bigger picture of the basement,
25 there were a lot of refrigerators there. There's never

1 been an allegation that Mr. Stein wasn't trying to keep
2 these things cold and trying to get these -- he doesn't
3 deny that he was involved in a crime, and he's
4 completely accepting responsibility. I just wanted to
5 give it some context.

6 The fact that he comes here today with no
7 criminal history and he didn't seek out this conduct --
8 he was sought out because he manages a warehouse at
9 this dental supply company. Yes, he did learn it was
10 illegal, and he accepted responsibility.

11 But as you can see from the letters that were
12 submitted on his behalf, he takes care of a lot of
13 people, including his 11-year-old daughter, his ex-wife
14 even though there's no agreement to do so.

15 His boss is here today, Jill Kalfa. His
16 ex-wife is here today, Merav, who wrote a letter. His
17 daughter -- we made a decision. Obviously, Mr. Stein
18 didn't want to bring her today. His parents would be
19 here. His mother is battling cancer in Israel. He has
20 other friends here and supporters, Yosef Kushner who
21 also wrote a letter.

22 He's very well liked in the community. He
23 does a lot of good in the community. He volunteers
24 running a warehouse Thursday night with a group that
25 delivers packages to the poor. So from a humanistic

1 standpoint, he's not your typical person who is here in
2 front of Your Honor, and we wanted to make that known.

3 In terms of his role in the conspiracy, he --
4 I argued loss amount. I'm not going to argue that
5 again. But in terms of his role, the government, I
6 think, has overstated -- and I say that respectfully --
7 his role in this conspiracy. I mean, he was doing what
8 Rivka Rabi was doing in New Jersey. There were people
9 in Florida doing what he was doing. When he went on
10 vacation, he asked a friend to help out and do this.

11 He had no role in managing this. He didn't
12 hatch this idea. He didn't even manage the other
13 people who were doing shipping. So the notion that
14 he's number three from Lexier, Burke, and then
15 Mr. Stein seems to overstate his role.

16 THE COURT: I have one factual question that
17 was raised by the statement of facts in
18 Mr. Ibrahimian's statement of facts; that is, that on
19 July 13, 2013, a letter was sent to a customer over
20 Mr. Stein's signature as Albert Simmins where he was
21 identified as coming from the chief operations office.
22 Is that something that he was aware of?

23 MR. CASPER: No. He didn't send that letter,
24 and nobody contends that he did send the letter.

25 THE COURT: Well, I understand he didn't send

1 it, but was he aware that he was being held out in that
2 capacity?

3 MR. CASPER: No. He did know that Simmins
4 was a name they were attributing in terms of the
5 shipping. As I explained earlier, some of that was the
6 gray market, and some of it was he knew that this
7 wasn't supposed to be coming in this way. But he was
8 not held out as any kind of manager in any capacity.
9 He never knew that letter went out until he saw the
10 indictment.

11 THE COURT: All right.

12 MR. CASPER: So in his role, he's being
13 painted as kind of overseeing this entire process. I
14 think it's fair to say that he never met Rivka Rabi,
15 didn't even know her name until this whole thing
16 happened. There were people in Florida. He wasn't
17 dealing with any of these people. They would ship
18 things to him, but it wasn't as if he had the position
19 in the company that they say he did. He was never
20 involved in any type of sales. He never went out and
21 marketed to other people that -- you know, that these
22 drugs are safe, effective, whatever they may be. His
23 role was merely to get the product in. He got his
24 instructions where to send it, how to send it.

25 Although you will see text messages and

1 e-mails talking about products arriving warm, you will
2 see also that Mr. Stein was trying to get things there
3 cold and doing the best he can to do that. That
4 doesn't mean that he thought that this picture of the
5 stuff in his refrigerator next to the Hellmann's was
6 the way this should be stored. We're not denying that.
7 But it's a different story than someone who is actively
8 just recklessly disregarding and sending these things
9 out and they're warm and he doesn't care.

10 There's also texts and e-mails that we
11 submitted and the government has also submitted that
12 actually say, Hey, this is warm. What do I do with
13 this? He e-mails Burke, and you'll see he never does
14 anything without being told what to do. In this whole
15 process, what do I do? This came in warm. Burke would
16 tell him, That's okay for two to six weeks; send it
17 out. And that's borne out in all of the 7 million
18 pages of documents that we went through.

19 So we would ask that he be treated like the
20 Rivka Rabi's of the world, the people in Florida, and
21 the others.

22 Now, agreed, we're not challenging the
23 \$13 million worth of product that may have gone through
24 his warehouse. We stipulated that because there's no
25 way for us to track that. But he had no way to know

1 what that was. The fact that he had \$13 million and
2 somebody like Ms. Rabi had \$4 million is only a
3 function of the fact that he was doing it longer.

4 And I think she made a third of what he had.
5 He made \$174,000 over that several-year period. But I
6 don't think by virtue of the fact that he was in it
7 earlier makes him in such a different role than these
8 others, some of whom received very favorable sentences,
9 others who weren't indicted at all and we'll never hear
10 about. So I think he should be treated as they were
11 treated.

12 You know, when I was sitting on the other
13 side of the table years ago as a prosecutor, we used to
14 look at what's this picture going to look like ten
15 years from now. We'd come to court humbly -- and
16 you'll hear from Mr. Stein in a minute, but he asks --
17 there's two ways this could go. One, you know, if he's
18 incarcerated, he will lose his job. He will not see
19 his daughter. He will be unable to support his
20 daughter.

21 Grant it, he's here because of his own
22 actions. I'm not saying that he's not. But he is a
23 person who really has an opportunity. Ten years from
24 now, if you look back, if he receives a favorable
25 probation -- whatever that may mean. If all he can do

1 in a seven-day week is go to work from 8:00 to 6:00 and
2 come home and he can support his daughter and she can
3 come see him every couple of weeks or once a month like
4 she does now, that makes a tremendous difference in his
5 life. If he can hold on to this job that he's had for
6 several years and done well at and is a thriving
7 company and that he will continue to do well at --
8 hopefully, when we look back ten years from now and we
9 say -- you know, if he's fortunate enough to receive a
10 sentence that allows him to do that and allows him to
11 take care of and see his daughter, you won't see him
12 back in this court or any other courtroom. It could
13 make a significant difference in his life as opposed to
14 going in the other direction.

15 So we ask that the Court sentence him to
16 probation, whether that means home confinement or some
17 level of a halfway house where he can just go to work
18 every day and keep doing what he's doing but remain out
19 of prison.

20 Thank you, Your Honor.

21 THE COURT: Thank you.

22 Mr. Stein, you have the opportunity to
23 address the Court before it imposes sentence if you
24 would like to say anything, sir.

25 THE DEFENDANT: Your Honor, I'm not very good

1 at speaking in public forums. So excuse me if I
2 fluster a little bit.

3 First off, I am terribly sorry for getting
4 involved in this criminal endeavor. I have no words
5 for remorse that I feel for -- and I apologize to the
6 Court and to the country, I guess, which laws I
7 evidently broke.

8 The last eight months since my arrest have
9 been quite difficult. I've been labeled now, well,
10 pretty much for life, I guess, as a felon, which has
11 tarnished my reputation, of course. But worst of all,
12 it has an effect on my daughter.

13 I used to travel to Toronto every other
14 weekend to see her for the last nine years since I
15 moved down to Baltimore for the job that I currently
16 have. Obviously, I can't do that now. That has been
17 tremendously difficult on her. She is able to come
18 down here and visit me from time to time. With the
19 prospect of me possibly being incarcerated, she is -- I
20 mean, needless to say, I am nervous; however, she is
21 especially nervous. I would ask Your Honor to have
22 mercy on my daughter and I so that I could continue to
23 see her and provide for her.

24 Thank you.

25 THE COURT: Have a seat for a moment, please.

1 This matter is before the Court for
2 sentencing in the case of *United States v. Hanoach David*
3 *Stein* with respect to his convictions for conspiracy,
4 in violation of Title 18, United States Code,
5 Section 371, which is a Class D felony, punishable by
6 up to 5 years in prison, a \$250,000 fine, full
7 restitution, a \$100 special assessment, and 3 years of
8 supervised release; and also as to Count 24 of the
9 indictment charging unlicensed wholesale distribution
10 of prescription drugs, in violation of Title 21, United
11 States Code, Sections 331(t), 333(b)(1)(D), and
12 353(e)(3)(B), which are Class C felonies, punishable up
13 to 10 years in prison, a \$250,000 fine, full
14 restitution, a \$100 special assessment, and 3 years of
15 supervised release.

16 This 37-year-old defendant was involved in
17 the illegal importation and distribution of misbranded
18 drugs for distribution and sale to doctors, medical
19 practices, and hospitals in the United States. On
20 December 3, 2014, a 25-count indictment was issued
21 against him and others charging him in eight counts
22 with conspiracy to defraud the United States, to import
23 misbranded drugs, to engage in money laundering, and
24 also the substantive offenses of unlicensed wholesale
25 distribution of misbranded drugs.

1 He was arrested on December 24, 2014, in
2 Maryland and was released on personal reconnaissance
3 with conditions which he has complied with. On May 7
4 of this year, the defendant pled guilty to Counts 1 and
5 24 charging conspiracy and unlicensed wholesale
6 distribution of prescription drugs.

7 The Court has reviewed the guideline sentence
8 applicable to this defendant and this offense. The
9 Court has also considered in that regard the objections
10 of the defendant who objects to paragraph 51 of the
11 presentence report, which he seeks to strike, as well
12 as seeking a minor role reduction in the offense level,
13 and the further objection to the use of gross proceeds
14 as the proxy for economic loss to victims, and the
15 2-level enhancement for fraudulent scheme that involved
16 a substantial amount of conduct outside the United
17 States.

18 The Court has reviewed the information
19 available to it, including the statements of facts
20 submitted under oath by the defendant, as well as the
21 other nonobjected to information in the PSR and the
22 applicable guidelines and commentary and, based on that
23 information, overrules these objections.

24 Let me speak specifically to the loss
25 enhancement based on gross sales. The commentary makes

1 clear that in this kind of a context involving
2 regulatory fraud, the gross sales is to serve as the
3 proxy for loss to the victims. The Court believes that
4 under the commentary and the rules, that amount is
5 required to be used. The Court will discuss in a
6 moment, however, the extent to which the Court believes
7 that's an appropriate reflection of this defendant's
8 culpability.

9 Based on those rulings, the Court calculates
10 the guideline sentence as follows: The base level is 6
11 increased by 20 levels to reflect the loss amount based
12 on gross sales of approximately \$14 million. A 2-level
13 increase is also appropriate since a significant part
14 of the conspiracy did occur outside of the United
15 States resulting in an overall offense level of 28.
16 The defendant, in the Court's view, is entitled to a
17 2-level reduction for acceptance of responsibility --

18 Am I correct the government has not moved for
19 a third level?

20 MR. DWYER: That's correct, Your Honor,
21 because the plea was only a week before trial.

22 THE COURT: -- resulting in an overall
23 offense level of 26, the guideline sentence for which
24 is 63 to 78 months. The defendant is eligible for
25 probation under the statutes but not under the

1 guidelines. Supervised release is recommended at 1 to
2 3 years, a fine of \$12,500 to \$125,000 with a \$100
3 special assessment as to each count.

4 The Court has also reviewed the sentencing
5 objectives under Section 3553 against the information
6 available to the Court. In that regard, the overall
7 conspiracy in this case began in approximately April
8 2011 and continued through the defendant's arrest in
9 December 2014 all for the purpose of smuggling into the
10 United States and distributing within the United States
11 misbranded prescription drugs and devices.

12 The members of the conspiracy were located in
13 both Canada and the United States and purchased from
14 coconspiring foreign suppliers prescription drugs and
15 devices manufactured and labeled for use in foreign
16 countries, including the Republic of Turkey, Canada,
17 France, Italy, United Kingdom, and other countries.
18 They then caused them to be shipped into the United
19 States, often through circuitous routes.

20 These illegally imported drugs included
21 orthopedic injections, rheumatology infusions, cosmetic
22 devices, optomology products, and oncology drugs,
23 including numerous drugs that required temperature
24 controls during shipment and storage, including Botox
25 and other drugs, including drugs that were injectable

1 prescriptions.

2 In order to avoid the regulatory functions of
3 the FDA, Customs and Border Patrol and Immigration and
4 Customs Enforcement, members of the conspiracy engaged
5 in a variety of actions, including breaking up large
6 shipments of prescription drugs and devices into
7 smaller separate packages to be sent to the United
8 States to multiple locations under multiple names over
9 multiple days to be consolidated upon arrival after
10 evading border detection, shipping packages through the
11 United Kingdom-based services that allow packages to be
12 delivered through the United Postal Service with less
13 scrutiny, including on customs forms misleading
14 statements about the package contents and value, and
15 addressing packages to members of the conspiracy under
16 false name and titles, and frequently mishandling
17 prescription drugs subject to strict temperature
18 requirements, such as cold chain products required to
19 be kept at a constantly low temperature for safe use,
20 and failing to keep and provide appropriate records to
21 track the proper shipping, storage, and transaction
22 histories of the prescription drugs.

23 The misbranding of these smuggled and
24 distributed prescription drugs and devices included
25 inadequate descriptions for their use, FDA black box

1 warnings, which are the strongest warnings the FDA
2 requires, as well as failure in some instances to bear
3 information in the English language.

4 Once in the United States, the drugs were
5 forwarded to doctors, medical practices, or alternate
6 locations, including the personal residences and
7 mailboxes of conspiring individuals known as
8 drop-shippers in the United States. These
9 drop-shippers regularly received packages of
10 prescription drugs and devices, removed the labels and
11 other *indicia* showing they had been imported from
12 abroad, repackaged the orders, and then reshipped them
13 to doctors and medical practices throughout the United
14 States in order to give the false impression that the
15 drugs were being distributed domestically and legally.

16 Overall, the conspiracy caused to be
17 illegally imported and distributed misbranded
18 prescriptions drugs and devices into the United States
19 amounting to approximately \$33 million with this
20 defendant receiving, storing, and reshipping in the
21 United States approximately \$14 million in gross
22 proceeds. He personally received approximately
23 \$174,000 for his services.

24 The defendant served as the primary
25 individual drop-shipper on behalf of Defendants SB

1 Medical, Inc., and TC Medical Group operating out of
2 his residence in Baltimore. In that role, his
3 residence served as a collection point to receive large
4 quantities of misbranded drugs and devices from abroad
5 or other drop-shippers. He would then repackage and
6 reship those misbranded drugs and devices throughout
7 the United States.

8 He often used a false name in connection with
9 his activities and was effectively coordinating various
10 shipments into the United States before they were
11 redistributed.

12 He was involved in the scheme and conspiracy
13 since at or near the beginning of the conspiracy and
14 worked with the leader of the scheme in the initial
15 startup phases of the scheme. Whatever may have been
16 the defendant's initial assumptions about the legality
17 of what he was doing, there's no doubt that he quickly
18 understood what he was doing was improper and illegal
19 and continued to expand his activities, nonetheless,
20 over time with what would appear to be rather
21 comprehensive knowledge concerning the overall scope
22 and operation of the scheme.

23 He received letters from the FDA dated as
24 early as November 2 and December 8, 2011, advising that
25 certain drugs had been detained as unapproved by the

1 FDA. He continued, nonetheless, and functioned as an
2 unlicensed wholesale distributor of these misbranded
3 drugs. In that capacity, he failed to adhere to
4 appropriate storage and handling, record keeping, and
5 reporting requirements that is required of lawfully
6 licensed wholesalers.

7 Rather than the required facilities, the
8 defendant used storage and handling facilities that had
9 inadequate lighting, ventilation, temperature,
10 humidity, and security as required for the safe
11 handling and the storage of prescription drugs and
12 devices.

13 He has no formal training or experience in
14 the handling of prescription drugs and devices and did
15 not properly quarantine damage, deteriorated,
16 misbranded, adulterated, or even counterfeit or
17 prescription drugs.

18 There's no doubt that the defendant was
19 involved in a large scale scheme that functioned to
20 defraud the United States and its agencies by impeding,
21 impairing, and defeating the lawful functions of the
22 FDA to protect the health and safety of the public by
23 ensuring that prescription drugs and devices
24 distributed in the United States were safe and
25 effective from the time of manufacturing until delivery

1 to the entity that sold or dispensed the product to the
2 ultimate consumer or patient.

3 The Court has no doubt that the defendant's
4 activities substantially contributed to the ability of
5 these companies to successfully import and distribute
6 these misbranded and improperly transported and stored
7 drugs and that he did so knowing that what he was doing
8 was illegal and that, as a result, he substantially
9 contributed to the distribution of drugs and devices
10 that threatened the public safety.

11 Nevertheless, without minimizing the
12 defendant's role, the Court has also considered, in
13 connection with assessing the level of culpability,
14 that while he was substantially involved over an
15 extended period of time, he was not, in fact, a leader
16 of the conspiracy. He did not participate in the
17 planning, marketing, or selling of the drugs and
18 devices and that he acted essentially at the direction
19 of others and that his financial benefit was limited
20 relative to others.

21 This is the defendant's first involvement in
22 the criminal justice system. The Court has considered
23 the information and materials that have been provided
24 concerning his background, including the many letters
25 it has received from family and friends.

1 Against this background and information, the
2 Court has considered the guideline sentence, the extent
3 to which it appropriately reflects the level of
4 culpability of this particular defendant. In that
5 regard, the Court has considered that the guideline
6 sentence is substantially driven by the \$14 million
7 figure used to calculate the loss amount even though
8 that amount does not reflect any particular loss.

9 The Court has also considered that in other
10 contexts, the defendant's gain of approximately
11 \$174,000 would be used to calculate the guideline
12 sentence, and the Court has considered the guideline
13 sentence were it calculated on that basis.

14 The Court has also considered the need in
15 this case for general and specific deterrence. With
16 respect to specific deterrence, the Court has
17 considered the defendant's background and the prospects
18 for recidivist behavior, which the Court assesses as
19 low. With respect to general deterrence, the Court has
20 considered the public interest, the role the defendant
21 played within the scheme, the dangers presented to the
22 public by the distribution of these drugs in the
23 fashion that they were, and the defendant's substantial
24 role in the improper storage and domestic distribution
25 of those drugs, including the volume of drugs

1 distributed, the length of time he performed those
2 activities, and his continued involvement in those
3 activities after clear and unmistakable warnings that
4 his activities were illegal.

5 Overall, the Court has considered the extent
6 to which alternative sentences can satisfy the
7 sentencing objective.

8 The Court has also considered the defendant's
9 age and the need to avoid unwarranted sentencing
10 disparities. In that regard, the Court has considered
11 the defendant's level of culpability relative to others
12 in the conspiracy, the sentence already imposed on a
13 coconspirator, and also the sentences imposed in other
14 cases of this type both within this court and
15 elsewhere. The Court has also considered his level of
16 involvement and culpability relative to the other
17 drop-shippers that the Court has already sentenced.

18 Finally, the Court has considered the
19 defendant's acceptance of responsibility.

20 The Court is in a position to impose sentence
21 at this time.

22 Mr. Stein, will you come to the podium,
23 please.

24 Mr. Stein, it will be the sentence of this
25 Court you be committed to the Bureau of Prisons for a

1 period of 8 months, following which you'll be placed on
2 1 year of supervised release under the standard terms
3 and conditions, including that you'll participate in
4 any programs for substance abuse or mental health
5 treatment that the government may require. The Court
6 will impose a \$200 special assessment due and payable
7 immediately. The Court will not impose a fine in light
8 of the restitution obligation that you have. That will
9 be the sentence of the Court.

10 Is there anything further?

11 MR. CASPER: Your Honor, we just request two
12 things: One, that he have a 90-day self-surrender
13 given the --

14 THE COURT: Is there any objection to
15 voluntarily surrender?

16 MR. DWYER: No objection, Your Honor.

17 THE COURT: All right. The Court will allow
18 the defendant to voluntarily surrender to the Bureau of
19 Prisons at a time and place to be designated for him
20 through the Pretrial Services and Probation office
21 under whose supervision he'll remain until he reports
22 to the Bureau of Prisons.

23 MR. CASPER: Thank you.

24 The only other remaining matter is due to his
25 religious affiliation, we request that the Court make a

1 recommendation of Otisville, New York, so he can
2 continue to be in the best possible scenario for his --

3 THE COURT: I'm sorry. Where in New York?

4 MR. CASPER: Otisville, New York.

5 THE COURT: All right. The Court will make
6 that recommendation to the Bureau of Prisons if it's
7 available and appropriate.

8 MR. CASPER: Thank you, Your Honor.

9 THE COURT: All right. Anything further?

10 MR. DWYER: Your Honor, the government has a
11 consent order of forfeiture that we would pass up with
12 the help of the court security officer. It has been
13 signed by the defendant, defense counsel, as well as
14 the government.

15 (Documents are handed up to the Court.)

16 THE COURT: The Court has entered the consent
17 order of forfeiture.

18 All right. Thank you.

19 Counsel and the defendant are excused.

20 MR. CASPER: Thank you, Your Honor.

21 -----
Time: 10:10 a.m.

22 I certify that the foregoing is a true and
23 accurate transcription of my stenographic notes.

24 /s/
25 Rhonda F. Montgomery, CCR, RPR